IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8848 of 2002
With
SPECIAL CIVIL APPLICATION No. 8852 of 2002
With
SPECIAL CIVIL APPLICATION No. 598 of 2003
With
SPECIAL CIVIL APPLICATION No. 5069 of 2003
With
CIVIL APPLICATION No. 2511 of 2003
In
SPECIAL CIVIL APPLICATION No. 8848 of 2002
With
CIVIL APPLICATION No. 2917 of 2004
In
SPECIAL CIVIL APPLICATION No. 8848 of 2002
With
CIVIL APPLICATION No. 11711 of 2005
In
SPECIAL CIVIL APPLICATION No. 8848 of 2002
With
CIVIL APPLICATION No. 2513 of 2003
In
SPECIAL CIVIL APPLICATION No. 8852 of 2002
With
CIVIL APPLICATION No. 2918 of 2004
In
SPECIAL CIVIL APPLICATION No. 8852 of 2002
With
CIVIL APPLICATION No. 11697 of 2005
In
SPECIAL CIVIL APPLICATION No. 8852 of 2002
With
CIVIL APPLICATION No. 11213 of 2005
In
SPECIAL CIVIL APPLICATION No. 5069 of 2003
With
CIVIL APPLICATION No. 10313 of 2007
In
SPECIAL CIVIL APPLICATION No. 8848 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

SPECIAL CIVIL APPLICATION No. 8848 of 2002

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KALPATARU LAND (SURAT) PRIVATE LTD.
Versus
A.K. LOOK PRINCIPAL SECRETARY AND OTHERS

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Appearance : - SCA 8848 OF 2002
MR SB VAKIL, SENIOR COUNSEL assisted by MR AS VAKIL for the Petitioner
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for the Respondents

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SPECIAL CIVIL APPLICATION No. 8852 of 2002

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SHAH & BROTHERS AND OTHERS
Versus
A.K. LOOK PRINCIPAL SECRETARY AND OTHERS

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Appearance : - SCA 8852 OF 2002
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for the Petitioners
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for the Respondents

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SPECIAL CIVIL APPLICATION NO.598 OF 2003

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STATE OF GUJARAT
Versus
KALPATARU LAND DEVELOPMENT PRIVATE LTD. AND OTHERS

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Appearance : - SCA 598 OF 2003
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for the Petitioner
MR PC KAVINA with MRS KT MEHTA, MR AB MUNSHI and MS MO NARSHIGHANI for Respondent No.1
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for Respondent Nos.69 to 84
None for Respondent Nos.2 to 68 and 85 to 102

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SPECIAL CIVIL APPLICATION NO.5069 OF 2003

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FAROKHBEGUM HUSAINUDDIN MIR AND OTHERS
Versus
KALPATARU LAND (SURAT) PRIVATE LIMITED AND OTHERS

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Appearance : - SCA 5069 OF 2003
MR ND NANAVATI, SENIOR COUNSEL assisted by MR YN RAVANI for the Petitioners
MR SB VAKIL, SENIOR COUNSEL assisted by MR AS VAKIL for Respondent No.1
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for Respondent Nos.69 to 84
None for Respondent Nos.2 to 68, and 84 to 102
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for the Respondent Nos.103 to 105

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CIVIL APPLICATION NO.2511 OF 2003

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FAROKHBEGUM HUSAINUDDIN MIR AND OTHERS
Versus
KALPATARU LAND (SURAT) PRIVATE LIMITED AND OTHERS

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Appearance : - CA 2511 OF 2003
MR ND NANAVATI, SENIOR COUNSEL assisted by MR YN RAVANI for the Applicant
MR SB VAKIL, SENIOR COUNSEL assisted by MR AS VAKIL for Opponent No.1
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for Opponent Nos.2 to 4

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CIVIL APPLICATION NO.2917 OF 2004

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NAWAB ZAKIYUDIN AZIMUDDIN HUSAIN KHAN AND OTHERS
Versus
KALPATARU LAND (SURAT) PRIVATE LIMITED AND OTHERS

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Appearance : - CA 2917 OF 2004
MR RD DAVE for the Applicants
MR SB VAKIL, SENIOR COUNSEL assisted by MR AS VAKIL for Opponent No.1
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for Opponent Nos.2 to 4

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CIVIL APPLICATION NO.11711 OF 2005

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MEHRUNISHA MAHAMED ALI MIR AND OTHERS
Versus
KALPATARU LAND (SURAT) PVT. LTD. AND OTHERS

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Appearance : - CA 11711 OF 2005
MR JP RAVAL for the Applicants
MR SB VAKIL, SENIOR COUNSEL assisted by MR AS VAKIL for Opponent No.1
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for Opponent Nos.2 to 4

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CIVIL APPLICATION NO.2513 OF 2003

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FAROKHBEGUM HUSAINUDDIN MIR AND OTHERS
Versus
SHAH & BROTHERS AND OTHERS

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Appearance : - CA 2513 OF 2003
MR ND NANAVATI, SENIOR COUNSEL assisted by MR YN RAVANI for the Applicant
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for Opponent Nos.1 to 4
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for Opponent Nos.5 to 7

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CIVIL APPLICATION NO.2918 OF 2004

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NAWAB ZAKIYUDIN AZIMUDDIN HUSAIN KHAN AND OTHERS
Versus
SHAH & BROTHERS AND OTHERS

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Appearance : - CA 2918 OF 2004
MR RAJESH DAVE for the Applicants
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for Opponent Nos.1 to 4
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for Opponent Nos.5 to 7

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CIVIL APPLICATION NO.11697 OF 2005

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MEHRUNISHA MAHAMED ALI MIR AND OTHERS
Versus
SHAH & BROTHERS AND OTHERS

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Appearance : - CA 11697 OF 2005
MR JP RAVAL for the Applicants
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for Opponent Nos.1 to 4
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for Opponent Nos.5 to 7

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CIVIL APPLICATION NO.11213 OF 2005

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FAROKHBEGUM HUSAINUDDIN MIR AND OTHERS
Versus
KALPATARU LAND (SURAT) PRIVATE LIMITED AND OTHERS

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Appearance : - CA 11213 OF 2005
MR ND NANAVATI, SENIOR COUNSEL assisted by MR YN RAVANI for the Applicants
MR SB VAKIL, SENIOR COUNSEL assisted by MR AS VAKIL for Respondent No.1
MR DD VYAS, SENIOR COUNSEL assisted by MR BHARAT JANI for Respondent Nos.69 to 84
None for Respondent Nos.2 to 68 and 85 to 102
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for the Respondent Nos.103 to 105

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CIVIL APPLICATION NO.10313 OF 2007

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SAIYED RASHIDKHATUN D/O TASADDUKHUSAIN
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance : - CA 10313 OF 2007
MR MTM HAKIM for the Applicant
MR KB TRIVEDI, ADVOCATE GENERAL assisted by MS SK VISHAN, ASSISTANT GOVERNMENT PLEADER for the Opponents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/08/2007

COMMON ORAL JUDGMENT

1. Kalpataru Land (Surat) Private Limited is before this Court being aggrieved by order dated 13.03.2002 passed by the Principal Secretary, Revenue Department (Appeals).

By the impugned order, the Principal Secretary (Appeals) was pleased to quash the order passed by the Collector, Surat dated 05.11.1997. The Principal Secretary (Appeals) was pleased to order that as suggested in the body of the order, the irregularities committed in making mutation entry No.594 be taken up to regularization after obtaining appropriate / necessary orders from the State Government. The Principal Secretary (Appeals) was pleased to order further that, until the exercise of regularization of mutation entry No.594 is not completed, status quo be maintained of the lands, subject matter of mutation entry No.594.

2. The matter is having chequered history. The land involved is admeasuring 1673 acres of survey No.506 (paiki), which bears old survey No.400 of village 'Abhwah', Taluka: Choryasi, District: Surat. Survey No.506 admeasures 2814 acres, at it was created by consolidation of two survey numbers.

3. Mr.S.B.Vakil, learned senior counsel appearing with Mr.A.S.Vakil for the petitioner in Special Civil Application No.8848 of 2002 submitted that the history which led to the present litigation starts from the year 1820. The same is not relevant / material for the purpose of deciding the controversy involved in the matter and hence, the same is not set out here.

4. The controversy involved in the matter is whether the appellate authority while passing the impugned order dated 13.03.2002 could have made such observations which are made and whether could have directed the Collector to take steps to get the irregularities regularized which are committed in getting the mutation entry No.594 entered into, after obtaining necessary orders from the State Government.

What is not in dispute in Special Civil Application No.8848 of 2002 is that order dated 05.11.1997 (Annexure-'B' to Special Civil Application No.8848 of 2002) was passed by the Collector in RTS proceedings. The Collector, Surat, after setting out the facts in detail, passed the order recording that:

> 'From the material produced on record, it is clear that mutation entry No.594 was made for the land bearing survey No.506 (paiki) and by said mutation entry, names of 67 persons were entered into. Thereafter the petitioner of Special Civil Application No.8848 of 2002 - Kalpataru Land (Surat) Private Limited, who was respondent No.1 before the

> Collector, had purchased various parcels of land and various mutation entries being 913 dated 02.02.1987, 914 dated 02.02.1987, 916 dated 03.02.1987, 986 dated 10.10.1988 and 987 dated 10.10.1988 were made. The said Kalpataru Land (Surat) Private Limited had purchased total 1350 acres of land."

The Collector has also recorded that, 'the land is purchased for building up, 'New Surat Township'. The Collector has recorded that:

> "Earlier the Mamlatdar, Choryasi had passed an order for the land bearing survey No.506 (paiki). Against that order of the Mamlatdar, one Shri Maganbhai Becharbhai Patel and others had filed appeal before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal, in case No.2972 had passed order dated 08.04.1976 in favour of the land owners. The effect was given by entry No.591 dated 09.12.1976. Against that decision of the Gujarat Revenue Tribunal, the Government had filed Special Civil Application No.4876 of 1992 before this Court. The said Special Civil Application was rejected by this Court by judgment and order dated 30.07.1992."

The Collector has recorded that:

> "Mutation entry No.861, which related to land bearing survey No.506 (paiki) and mutation entry Nos.919 to 939 were taken in revision by the Assistant / Deputy Collector, Choryasi Prant, Surat, who had cancelled the same by orders dated 31.12.1989 and 30.04.1990. This order of the Assistant / Deputy Collector was again the subject matter of 23 Special

Civil Applications being Nos.6511, 6327, 6329, 6334, 6336 to 6348 of 1990. This High Court by by its judgment and order dated 14.03.1996 quashed the order of the Assistant / Deputy Collector, Choryasi Prant, Surat. The said decision of the High Court was accepted by the Legal Department, Sachivalaya, Gandhinagar vide its letter No.HCA/1996/16/1585/2 dated 28.___.96. The said decision of the Legal Department was communicated to the office of the Collector by letter of the Revenue Department bearing No.M-30-SCA-6327-90-J dated 02.11.1996 and the Collector office was directed to take further steps in the matter."

The Collector then proceeds to record that:

"Kalpataru Land Development Pvt. Ltd. has purchased the land vide mutation entry Nos.913, 914, 916, 986 and 987 after distribution of the land, which was subject matter of mutation entry No.594 for putting up 'New Surat Township' and sufficient material is placed on the record to show that the land is not purchased with a view to be an agriculturist. Not only that, after purchase of this land, they have not purchased any other land; that the land in question (survey No.506) is under the head of, 'pot kharaba'; that the land is not cultivable and if at all it is to be made cultivable then huge amount is required to be spent and it is only thereafter that the Agricultural Land Ceiling Act can be made applicable; that the object of the company (petitioner of SCA No.8848/02) – Kalpataru Land Development Pvt. Ltd. is of putting up 'New Surat Township' and report in this regard is already asked for by the Government."

The Collector has then proceeded to record that"

> "Taking into consideration the aforesaid facts, on the conditions set out in the order, to see that the order of the High Court is not disobeyed and as per the remand order of the Secretary (Appeals), the notice issued to the petitioner, qua mutation entry Nos.594, 913, 914, 916, 986 and 987 is filed under Sub-rule 6 of Rule 108 of the Land Revenue Rules.'

5. Mr.S.B.Vakil, learned senior counsel appearing with Mr.A.S.Vakil for the petitioner in Special Civil Application No.8848 of 2002 assailed the order impugned, i.e. dated 13.03.2002 on various grounds.

The learned senior counsel submitted that there is delay in issuing notice dated 01.01.2002 by respondent No.1 – Principal Secretary (Appeals) for exercise of its revisional power under Section 211 read with Rule 108 (6), whereby the order of the Collector dated 05.11.1997 is sought to be taken in revision.

The learned senior counsel relied upon the following various decisions:

I. **STATE OF GUJARAT VS. PATEL RAGHAV NATHA AND OTHERS**, reported in **1969 GLR 992 (SC)**

II. **J.G.KUNDALIA AND OTHERS VS. MAMLATDAR RAJKOT**

TALUKA AND OTHERS, reported in **2001 (2) GCD 896 (Guj)**

In support of the submission that respondent No.1 – Principal Secretary (Appeals) could not have exercised the suo motu revisional power after a delay of more than 4 years, as it is not permissible under the law.

6. The law is settled on the point and it is not in dispute that an order cannot be taken into revision or in other words revisional power cannot be exercised after a lapse of reasonable time, much less more than 4 years in the present case.

7. The learned senior counsel contended that the impugned order, i.e. dated 13.03.2002, is without jurisdiction because the revenue authorities could not have passed an order of cancelling the entries on an assumption that the transaction – subject matter of the entry is against the provisions of some other enactment.

At this juncture, the learned senior counsel invited attention of the Court to the paragraph preceding to the operative part of the order, wherein the Secretary (Appeals) has recorded that, 'in recording mutation entry No.594, as discussed hereinabove, the State Government has suffered loss of stamp duty'. Besides, the Secretary (Appeals) has also recorded that, 'it is not in doubt that in making entry No.594 and certifying the same, various provisions of the Bombay Stamp Act, Indian Registration Act and Transfer of

Properties Act are violated'.

The learned senior counsel submitted that violation of any particular law can be looked into by an authority, who is conferred power to look into such violation. He submitted that one authority while exercising power under a particular law, cannot look into the breach of any other law and pass order for the same. He submitted that in this case, the Secretary (Appeals), while considering the order of the Collector dated 05.11.1997 in RTS proceedings, could have exercised the jurisdiction, which he is expected to exercise in RTS proceedings. He submitted that this is well settled not only under the provisions of law but also by various decisions of this Court as well as that of the Hon'ble the Apex Court.

In this regard, the learned senior counsel relied upon the following decisions:

I. **EVERGREEN APARTMENT CO-OP. HOUSING SOCIETY VS. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE**, reported in **1991 (1) GLR 113**.

II. **JANARDAN D.PATEL VS. STATE OF GUJARAT**, reported in **1997 (1) GLR 50**.

III. **SIDDHARTHBHAI B.SHAH AND OTHERS VS. STATE OF GUJARAT AND OTHERS**, reported in **1999 (3) GLR 2527**.

8. The position of law is clear on the point and the authority could not have taken into consideration the violations of various provisions of various laws as is referred to hereinabove. To that

extent, the order is without jurisdiction.

9. The learned senior counsel submitted that in the present case, there is a repeated exercise of suo motu power. He submitted that the predecessor in title of the petitioner became owner of the land under six registered sale deeds executed in August 1969, September 1969 and December 1969 and in respect of these sale deeds, mutation entries were made in the year 1976 being mutation entry Nos.496, 497, 498, 499, 500 and 501. The learned senior counsel submitted that thereafter, Memorandum of Understanding was executed between the parties dated 18.08.1969 and names of 67 persons were mutated vide mutation entry No.594 dated 09.12.1976. The persons, who had aforesaid sale deeds in their favour plug 67 persons, who had the aforesaid Memorandum of Understanding executed in their favour, sold the lands to various persons, including the petitioner – 'Kalpataru', from time to time by executing registered sale deeds. These sale deeds then led to making of mutation entries and one of such mutation entry was mutation entry No.861 made on 15.01.1985 in favour of one Balvantrai Vyas. Subsequently, five other mutation entries were made in favour of the petitioner between February 1987 to October 1988.

10. The learned senior counsel, elaborating the exercise of the revisional powers in the matter, submitted that first exercise of the revisional power was made by the Deputy Collector, Choryasi Prant

in respect of mutation entry No.861. The said entry was cancelled by order dated 31.12.1989. The petitioner being aggrieved by order dated 31.12.1989, challenged the same along with 21 other persons by filing 22 writ petitions before this Court. The said 22 writ petitions were allowed by judgment and order dated 14.03.1996, which is a reported decision of this Court in 1996(2) GLR 600). Thus, mutation entry No.861 stood the test of validity up to this Court.

11. Learned senior counsel submitted that then started second round of exercise of revisional power. This time revisional power was exercised by the Collector, Surat who issued notice dated 18.12.1995. He submitted that incidentally, this notice was issued during the pendency of the aforesaid 22 writ petitions. The notice was issued to revise mutation entry No.594 dated 09.12.1976. Thus, the Collector, by its order dated 28.09.1996/01.10.1996, cancelled mutation entry No.594 dated 09.12.1976, exercising the revisional power almost after 20 years.

The learned senior counsel submitted that before the petitioner could challenge that order of the Collector, the Collector, Surat issued notices under Rule 108(6) on 30.09.1996 / 08.10.1996 for revision of mutation entry Nos.913, 914, 916, 986 and 987 made in favour of the petitioner – Kalpataru. He submitted that challenge of the petitioner to the order of the Collector dated 28.09.1996 / 01.10.1996 succeeded before the Principal Secretary (Appeals) and the Principal Secretary (Appeals) vide its order dated 29.11.1996 set

aside the order of the Collector, consequence thereof, notices dated 30.09.1996 / 08.10.1996 were also stood quashed and set aside as the same were based on the order of the Collector dated 28.09.1996 / 01.10.1996.

The learned senior counsel submitted that the matter was remanded to the Collector and on remand, the Collector passed order dated 05.11.1997, which is taken in revision by the Principal Secretary (Appeals), wherein impugned order dated 13.03.2002 is passed.

12. The learned senior counsel submitted that taking the order of the Collector dated 05.11.1997 in revision by the Principal Secretary (Appeals) is nothing but fourth round of exercise of revisional power, whereby the Principal Secretary (Appeals) has quashed and set aside the order of the Collector and has passed the order under challenge.

13. The learned senior counsel submitted that the revisional power exercised by the Principal Secretary (Appeals) is malafide inasmuch as, mutation entry No.861 was taken in revision in the year 1989 and that entry was sought to be cancelled by order dated 13.12.1989. This order dated 13.12.1989 was the subject matter of 22 writ petitions before this Court in the year 1990. It was during the pendency of those 22 writ petitions that the Collector, Surat issued notice dated 18.12.1995 exercising his suo motu powers to revive mutation entry No.594 dated 09.12.1976.

The learned senior counsel submitted that even at the cost of

repetition, he be permitted to reiterate that this was done after lapse of almost 20 years from the date of making of an entry being mutation entry No.594, made in the year 1976 and the notice was issued in the year 1995. The learned senior counsel submitted that the authorities ought have refrained themselves from issuing notice dated 18.12.1995, more particularly when order dated 31.12.1989 was pending adjudication before this Court in 22 writ petitions. He submitted that challenge to order dated 31.12.1989 succeeded and mutation entry No.861 was confirmed by common judgment and order dated 14.03.1996 of this Court. The learned senior counsel submitted that he be permitted to reiterate that the said common judgment and order dated 14.03.1996 is accepted by the State and therefore, it is not open for the Principal Secretary (Appeals) to pass order impugned dated 13.03.2002, which amounts to overreaching the judgment and order dated 14.03.1996 of this Court in the aforesaid 22 writ petitions.

14. The settled position of law is that in RTS proceedings, power which can be exercised is limited. In RTS proceedings, it is not open to the authority to take note of and issue directions with regard to violations of provisions of different laws. To that extent, order passed by the authority is vitiated and deserves to be quashed and set aside.

15. The learned senior counsel submitted that interestingly, the State Government has also filed a petition being Special Civil

Application No.598 of 2003, challenging this very order passed by the Principal Secretary (Appeals) dated 13.03.2002. He submitted that the petition was filed subsequent to filing of the petition by the petitioner – Special Civil Application No.8848 of 2002. The learned senior counsel submitted that in fact, the pendency of Special Civil Application No.8848 of 2002 is made the basis for getting the petition filed by the State admitted and the same is tagged along with the petition filed by the petitioner. He submitted that in the petition (SCA 598/03), the Government has prayed that:

> "13. (A) This Hon'ble Court may kindly be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 13.03.2002 (Annexure-A to the petition) passed by the learned Revisional Authority, to the extent stated in para 4 above."

The learned senior counsel submitted that challenge to order dated 13.03.2002 is set out in paragraph No.4 of Special Civil Application No.598 of 2003, filed by the Government, which is reads as under:

> "4. Being partly aggrieved and dissatisfied by the aforesaid order dated 13.3.2002, passed by the Revisional Authority, the petitioner, approaches this Hon'ble Court by way of the present petition challenging the legality and validity of the same, to the following extent :
>
> – Insofar as the same holds that the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 and the

Gujarat Agricultural Lands Ceiling Act, 1960 are not applicable to the lands in question,

- Insofar as the same holds that there appears to be no irregularity in the sale transactions that have taken place after mutation entry No.594,

- Insofar as the same directs the Collector, Surat, to obtain orders for regularising the irregularities committed while approving mutation entry No.594 in respect of the lands in question from the State Government and to take necessary action thereon.

- Insofar as the same holds that though the 67 individuals whose names are included in the mutation entry NO.594 have entered into sale/partition transaction in violation of the relevant laws, the subsequent purchasers do not appear to have violated any provisions of law."

The learned senior counsel submitted that challenge to the order impugned is not tenable in the eye of law mainly on the ground that the order passed by the Principal Secretary (Appeals) is an order passed by a quasi judicial authority and when that quasi judicial authority is acting on behalf of the Government, the Government cannot be allowed to challenge the order passed by its 'delegatee'. He submitted that an act of 'delegatee' is for all practical purposes is an act of the 'principal' and the principal cannot challenge its own act.

The learned senior counsel submitted that besides, the Government has no stake in the matter inasmuch as, the grounds on which the

order is challenged, as set out hereinabove, do not make out that interest of the Government is involved in the matter. Besides, violation, if any, of any other law can, always be looked into by the authority under that particular law and therefore, the order under challenge, dated 13.03.2002 cannot be allowed to be challenged by the Government.

16. Mr.Kamal B.Trivedi, learned Advocate General appearing with Ms.Sangeeta K.Vishan, learned Assistant Government Pleader for the respondents – State authorities relied upon a decision of the Hon'ble the Apex Court dated 16.10.2006 rendered in Civil Appeal No.4505 of 2006, whereby, the Hon'ble the Apex Court was pleased to quash and set aside the judgment and order of the learned Single Judge of this Court in the matter of **COLLECTOR OF RAJKOT VS. BAVABHAI KARSHANBHAI PATEL** reported in **2002 (3) GLH 590**, which was confirmed by a Division Bench of this Court. The learned Advocate General relied upon the following observations made by the Hon'ble the Apex Court:

> “..... We are of the view that when an illegality is committed, it is open to the Collector to challenge the same to protect the interest of the State. Therefore, both the learned Single Judge and Division Bench of the High Court were not correct in saying that the Collector cannot challenge the order passed by the Secretary to the State Government.
>
> Since, the controversy has not been settled on merits, we set aside the order of the learned Single Judge and the Division Bench of the High Court and the matter is remitted back to the

learned Single Judge by restoring Special Civil Application No.3486 of 2002 before the learned Single Judge. The learned Single Judge shall after hearing the parties consider the respective merits and pass an appropriate order in accordance with law. We make it clear that the parties are at liberty to raise all rights and contentions before the learned Single Judge.....”

17. The aforesaid decision has no application to the facts of the present case. In the present case, the violations of other laws are pending before the appropriate forum, which will be looked into in those pending proceedings.

It is however clarified that this judgment will not have any impact on those pending proceeding and they will be decided on their own merits strictly in accordance with law.

SPECIAL CIVIL APPLICATION NO.598 OF 2003

18. In view of above, challenge of the Government to the order impugned fails. In the result, Special Civil Application 598 of 2002 fails and it is dismissed. Rule is discharged. No costs. Interim relief granted earlier is vacated.

SPECIAL CIVIL APPLICATION NO.8848 OF 2002

19. So far as Special Civil Application No.8848 of 2002 is concerned, the same is allowed, on the ground of delay in taking the order of the Collector dated 05.11.1997 in suo motu revision and on

the ground that the Principal Secretary (Appeal) could not have passed the order in RTS proceedings which exceeds the jurisdiction. Order dated 13.03.2002 is quashed and set aside. Order dated 05.11.1997 passed by the Collector, Surat revives. Rule is made absolute. No costs.

20. At the request of the learned senior counsel for the petitioner, the petitioner is discharged from the undertaking filed on 03.09.2002, in view of the fact that the petition is allowed and order dated 13.03.2002 is quashed and set aside by this Court.

It is expected and hoped that the proceeding pending before the Gujarat Revenue Tribunal in the matter of T.E.N./B.S./104/2003 would be disposed of as expeditiously as possible

SPECIAL CIVIL APPLICATION NO.8852 OF 2002

21. So far as Special Civil Application No.8852 of 2002 is concerned, the petitioners of this petition have also challenged order dated 13.03.2002 almost on the same grounds on which the petitioner of Special Civil Application No.8848 of 2002 have challenged. As Special Civil Application No.8852 succeeds, this petition also succeeds, more particularly when the entries made in favour of the petitioners of this petition are based on mutation entry No.594. When challenge to mutation entry No.594 vanishes, challenge to subsequent entries on the same grounds also vanishes and the entries remain in force. The petition is allowed. Rule is

made absolute. No costs.

At the request of the learned senior counsel for the petitioner, the petitioner is discharged from the undertaking filed on 03.09.2002, in view of the fact that the petition is allowed and order dated 13.03.2002 is quashed and set aside by this Court.

SPECIAL CIVIL APPLICATION NO.5069 OF 2003

22. The petitioners of this petition have challenged order dated 13.03.2002. The said challenge is only to a limited extent, as is apparent from the prayer clause (A) of paragraph No.14, which reads as under:

> "14. (A) Your Lordships may be pleased to issue a writ of mandamus or certiorari and/or any other writ, order or direction to quash and set aside the order dated 13.03.2002 passed by the learned Principal Secretary, Revenue Department (Appeals), shown at Annexure-A to the present petition to the extent that it directs the District Collector to obtain permissions from the Government to regularize the ownerships of the Respondent Nos.1 to 102 & other persons for land situated at Survey No.506 of village Abhava, District Surat;"

23. Mr.N.D.Nanavati, learned senior counsel appearing with Mr.Y.N.Ravani for the petitioners submitted that the petitioners of this petition have only limited grievance against order dated 13.03.2002. He submitted that by the impugned order, the Principal

Secretary (Appeals) has directed the Collector to obtain necessary permission from the Government so as to regularize the irregularities with which mutation entry No.594 suffers.

Necessarily, this challenge relates to the ownership aspect of the land. As discussed hereinabove, the ownership aspect can always be agitated by the parties before a competent Civil Court. As and when such right is asserted before a competent Civil Court, subject to rights of the other parties to contest the same on all available grounds, it will be considered by the competent Civil Court.

24. In the result, this petition fails and the same is rejected. Rule is discharged. No costs.

It is clarified that allowing of Special Civil Application Nos.8848 and 8852 of 2002 and rejection of Special Civil Application No.598 of 2003 and the present petition (SCA No.5069/03) has nothing to do with the 'ownership' of the parties. The same will be considered by a competent Civil Court as and when such issue is raised before the Civil Court.

At this juncture, Mr.S.B.Vakil, learned senior counsel for the petitioner of Special Civil Application No.8848 of 2002 requested that it be clarified that the petitioners of Special Civil Application No.5069 of 2003 have not placed any material on record to show that they were vigilant about their right of ownership right from 1969. He submitted that therefore, the petition is required to be dismissed in toto turning out the request of the petitioners, even to

that limited extent, to which it is restricted to.

25. Non-action on the part of the petitioners of Special Civil Application No.5069 of 2003 is a matter of record of this Court. It is clear from the record that the petitioner of this petition became active only after issuance of notice of this Court in the other two petitions.

CIVIL APPLICATION NOS. 2511 OF 2003, 2917 OF 2004, 11711 OF 2005, 2513 OF 2003, 2918 OF 2004, 11697 OF 2005 AND 11213 OF 2005.

26. These Civil Applications are filed for being impleaded as party respondent and bringing heirs on records in the respective petitions.

27. The Court has not found any justification for the same, hence these Civil Applications are dismissed as not maintainable.

CIVIL APPLICATION NO.10313 OF 2007

28. This Civil Application is filed praying for the following reliefs:

> "(11) (A) THIS HONOURABLE COURT MAY BE PLEASED TO implead the applicant as party – respondent No.4 in the petition being Special Civil Application No. 8848/2002 and permit the applicant to appear and contest the proceedings of main petition, in the interest of justice and equity.
>
> (B) Pending admission hearing and till final disposal of present application THIS HONOURABLE COURT MAY BE PLEASED TO stay further proceedings of Special Civil

Application No. 8848/2007, in the interest of justice and equity."

29. So far as prayer for being impleaded as party respondent is concerned, the same cannot be granted in view of the reasons set out in Special Civil Application No.8848 of 2002. So far as prayer to stay further proceedings of Special Civil Application No.8848 of 2002 is concerned, the same does not survive as the said petition is finally decided by this Court.

In the result, this application fails and it is rejected.

30. At the request of the learned counsels appearing for the respective parties in the respective matters, it is clarified that allowing of Special Civil Application Nos.8848 and 8852 of 2002 and rejection of Special Civil Application Nos.589 and 5069 of 2003 and all the Civil Applications, does not in any manner pronounces on the issue of ownership, which is an independent issue and can always be raised / agitated in the Court of competent jurisdiction by filing appropriate proceedings.

It is further clarified that as and when right, title or claim is agitated before a competent Civil Court, it will be open for the parties concerned to contest the same on all the pleas available under the law, including the plea of limitation.

(RAVI R.TRIPATHI, J.)

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